

FACT SHEET

SUBJECT: Dependency, Neglect, and Abuse Hearings

1. PURPOSE. This fact sheet deals with dependency, neglect, and abuse (DNA) hearings conducted under the Limited Retrocession Agreement (LRA). DNA hearings deal with child neglect and physical, sexual, or emotional abuse. The LRA allows the Kentucky courts to remove a child from an abusive home on post and place the child in ACS custody. Off-post cases are handled by the Kentucky Cabinet for Families and Children. The process is outlined below.

2. FACTS.

a. Emergency Custody Order. After coordination with OSJA, a social worker signs a sworn affidavit alleging danger of serious injury, sexual abuse, or death to the child and requesting emergency custody. A judge signs the order without a hearing. The burden of proof is reasonable belief (see KRS 620.060). An 'ATTORNEY ADVISOR ACS DNA INFORMATION SHEET' should be started and a file folder prepared for all notes and documents.

b. 72-Hour Hearing. A hearing is held within 45 days of 72 hours of taking custody (excluding weekends and holidays). An outline of the case should be prepared for the county attorney. Hearsay is admissible, and only one government witness is usually necessary. Both sides may present evidence. The court issues an order granting temporary custody. The standard is that a preponderance of the evidence shows reasonable grounds to believe that the child would be dependent, neglected, or abused if left with or returned to parents (see KRS 620.080, 620.090).

c. 45-Day Hearing. A hearing is held within 45 days of the 72-hour hearing unless the court extends the time. Subpoenas for government witnesses should be requested from the Clerk of the Court's office the day after the 72-hour hearing, with further requests if more witnesses become necessary. An outline of expected testimony of each witness should be prepared for the county attorney. Normal rules of civil procedure apply. The court issues an order that may permanently decide the case. The standard is that a preponderance of the evidence shows that the child would be dependent, neglected, or abused if left with or returned to parents (see KRS 620.090(5), 620.100).

ATZK-JAA

SUBJECT: Dependency, Neglect, and Abuse Hearings

d. Ultimate Goal. The goal is to reunite the family through treatment or find a permanent placement for the child if the child cannot be safely reunited. The problem of relinquishing custody when a child no longer has a military connection and other special problems and concerns that may arise in a DNA case will be covered in a separate MFR.

3. POC is the Administrative Law Division, 4-7414/4668.

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FACT SHEET

SUBJECT: Divesting the Army of Custody of Children

1. **PURPOSE.** Army Community Service (ACS) sometimes takes custody of abused or neglected children through hearings before Kentucky district courts conducted under the Limited Retrocession Agreement (LRA). This fact sheet deals with the process of divesting the Army of custody of children who no longer have a service connection (usually because the military sponsor has been separated from the Army).

2. **FACTS.**

a. Why Custody Must Be Divested. It is a violation of federal law for the Army to provide services or spend money for the benefit of a child with no service connection or other authorization. See 31 U.S.C. sec. 1301(a). When a child's military sponsor is separated from the service, the Army cannot retain custody of the child under the Retrocession.

(1) Among other things, the Army cannot provide programs or services under AR 608-18. See AR 608-18, paragraphs 1-3, 1-4, and Glossary "Child." The Army cannot provide CHAMPUS benefits. See DoD 6010.8R, Chapters 1D and 3E.

(2) Rules allowing for certain transition benefits, including a period of medical care benefits for family members after separation, are constantly changing and should be consulted for their impact on the custody issue.

b. Procedure. Coordination with the unit is essential to ensure adequate time to arrange for divestiture of child custody if the service member will be separated. A letter should be sent to the appropriate district court judge informing the judge of the situation. A motion hearing should be scheduled through the county attorney's office to obtain an order transferring custody from the Army to an appropriate party.

c. Interstate Compact. If the intended domicile of the parent is known, ACS should attempt an interstate compact with that state, arranging for the receiving state to take over custody and/or responsibility for monitoring the family. If the state will not participate in an interstate compact, ACS should send the state a letter notifying them of the situation and the needs of the child.

ATZK-JAA

SUBJECT: Divesting the Army of Custody of Children

d. Motion Hearing. At least two weeks notice is required to schedule a normal motion hearing. A recommendation should be made regarding transfer of custody. If it is not safe to return the child to its parents and there are no suitable relatives or other persons, transfer to the Kentucky Cabinet for Families and Children (CFC) should be recommended.

(1) CFC may argue that they do not have jurisdiction if the family resided on post and may resist an attempt to transfer custody to them. We have a very strong argument that the court does have jurisdiction to transfer custody to CFC.

(2) **Continuing Army custody is not an option.** If there is no transfer of custody by the court, OSJA must decide whether to release custody to the parent, with warning letters to Kentucky and every jurisdiction in which it is likely the parent may choose to reside; or, if the parent is simply too dangerous, to seek a writ of mandamus in federal court compelling the Kentucky court to order an appropriate transfer of custody.

e. Emergency Custody Order. If the soldier will be separated before a normal motion hearing can be conducted and a relative or other suitable person is available to take custody of the child, OSJA can seek transfer of custody through an emergency custody order. An Army representative must sign a sworn affidavit (KY Form AOC-JV-1, Juvenile Complaint or Petition) indicating that ACS cannot maintain legal custody of the child, and the reason(s) the child cannot be returned to the parent without danger of serious injury, sexual abuse, or death to the child. A judge must sign the order (KY Form AOC-JV-22, Juvenile Emergency Custody Order).

3. POC is the Administrative Law Division at 4-7414/4668.

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INFORMATION PAPER

SUBJECT: Processing Allegations of Child Abuse and Juvenile Custody Concerns on Fort Knox

1. PURPOSE. This information paper outlines the various jurisdictional concerns which arise in the processing of child abuse or child custody situations.

2. SUMMARY. A child abuse case involves both criminal and civil jurisdiction. Army Community Service (ACS) is involved with abuse cases occurring on Fort Knox. State law applies to child custody issues arising on Fort Knox. Neither ACS nor any Fort Knox agency can determine custody of a child because the Commonwealth of Kentucky courts have jurisdiction over all child custody cases.

3. INFORMATION.

a. Introduction.

(1) Jurisdiction is a term used to describe the legal right by which judges and courts exercise their authority. Military jurisdiction involves soldiers. Federal jurisdiction involves areas under Federal control, such as Fort Knox. State jurisdiction involves matters which are not of a Federal or military interest.

(2) Criminal jurisdiction concerns a court's ability to punish bad behavior which is proscribed by the law, such as child sexual abuse. Civil jurisdiction concerns a court's ability to make a determination (e.g., rule on child custody) in non-criminal cases. The juvenile division of the Kentucky District Court is a court of civil jurisdiction.

(3) Custody refers to legal responsibility for the care, control, and maintenance of a child as opposed to mere physical possession.

b. Federal Law. Criminal conduct occurring on Fort Knox involves Federal jurisdiction. Certain types of conduct, like counterfeiting or Federal tax evasion, are violations of Federal criminal law. Various crimes taking place on Fort Knox violate Kentucky law but not Federal law and can, therefore, be assimilated for prosecution as Federal offenses. Assimilation can only be accomplished for those crimes, such as driving under the influence of alcohol, not covered by a Federal statute. Federal law does not

ATZK-JAA

SUBJECT: Processing Allegations of Child Abuse and Juvenile Custody Concerns on Fort Knox

specifically address child abuse, neglect, or dependency. Family law issues, such as child custody, are left to the Commonwealth of Kentucky to regulate.

c. Kentucky Juvenile Custody Law. The Kentucky Code deals with juvenile matters to include child abuse, neglect, and dependency. Many actions which may constitute child abuse from a social worker's point of view are not addressed as criminal violations and therefore are not criminal offenses. Instead, the code provides a civil jurisdiction system to resolve non-criminal child abuse allegations and to make custody determinations. Child abuse cases proceed as follows:

(1) All allegations of child abuse or neglect are first investigated by a case worker.

(2) If the allegation is validated by the case worker, the case is then referred to the juvenile division of the Kentucky District Court.

(3) The juvenile division judge rules on matters such as temporary custody of the child pending final resolution of the case.

(4) The juvenile division of the Kentucky District court is the only court with recognized jurisdiction in child custody matters.

d. ACS Foster Care. A retrocession agreement between the Department of the Army and Kentucky gives the District Courts of Kentucky the authority to remove neglected, abused, and dependent children from homes on Fort Knox for placement in foster care. There must be some military interest (e.g., the parent is a soldier) and the child must be located on Fort Knox before ACS can get involved. Neither the military nor any Fort Knox agency has any power to determine child custody since all cases must go through the Kentucky juvenile system. All ACS foster care cases should be coordinated through the SJA Case Review Committee (CRC) advisor or the SJA on-call officer.

e. Criminal Abuse Charges Involving Fort Knox. When criminal activity, such as an assault, has occurred on Fort Knox, the Federal magistrate (misdemeanor court judge) or the Federal felony judge may order the defendant to stay away from the child. If the defendant is the parent of the victim, the Federal court cannot issue an order

ATZK-JAA

SUBJECT: Processing Allegations of Child Abuse and Juvenile Custody Concerns on Fort Knox

that affects child custody because the juvenile division of the Kentucky District Court has exclusive jurisdiction. Magistrate's Court has only Federal jurisdiction over the criminal conduct. A commander may order a soldier to stay away from a place or from certain persons, but a commander cannot determine custody of children. Similarly, a military judge at a court-martial cannot make rulings affecting child custody. A child abuse case involves both criminal jurisdiction and civil (juvenile custody) jurisdiction. The Kentucky CFC and ACS need to process all cases which involve abuse to children of Fort Knox personnel like any other child custody matter. Child abuse cases rising to the level of criminal conduct should be promptly reported to the police and to the SJA office.

f. Search and Seizure. A search of government quarters for evidence of a crime must be approved by a military magistrate or by the Garrison or Installation Commander. A military magistrate should not be confused with the Federal magistrate. A military magistrate is a designated attorney in the office of the Staff Judge Advocate who deals with criminal questions, such as search or seizure, concerning soldiers or persons on Fort Knox. A military magistrate cannot approve a search of quarters for non-criminal matters such as the civil matters under the Kentucky Code, nor can a military magistrate make a child custody determination. The military police or the SJA's office will coordinate criminal investigations which are presented to a military magistrate. Any questions regarding possible military magistrate involvement in ACS family cases must be referred to the SJA CRC advisor or the on-call SJA officer. It is important to keep the SJA office informed of the source of any information when criminal conduct such as a sexual assault is suspected.

g. Health Inspections of Fort Knox Quarters. Fort Knox quarters are the responsibility of the Garrison Commander. Only the occupant, the Garrison Commander, or the Installation Commander can authorize a health inspection when neglect is suspected based on reasonable information. ACS cases involving quarters should be handled as follows:

- (1) Notify unit commander of the possible problem.
- (2) Coordinate with MPI.

ATZK-JAA

SUBJECT: Processing Allegations of Child Abuse and Juvenile Custody Concerns on Fort Knox

(3) Approach the occupants and ask for permission to go in and look around after first properly identifying yourself.

(4) Note anything which is observed from the outside of the building, such as appearance, open windows, or smell.

(5) If the occupants do not give permission, ACS should consult with the CRC advisor from the SJA's office.

(6) In appropriate cases, the Garrison Commander will be advised by the SJA about the information available and then decide whether to authorize a health inspection.

(7) After inspecting the quarters, ACS should handle valid cases of child neglect or abuse through the Kentucky juvenile courts if removal is required.

h. Emergency Foster Custody. Emergency foster custody should be considered in those cases where sexual abuse has occurred or there is an immediate threat of serious bodily harm. CFC is the agency to consult for off-post cases while ACS deals with the Fort Knox cases. The Kentucky juvenile court will have a hearing within 72 hours to consider whether ACS will continue to supervise foster care. Again, the SJA CRC advisor should be consulted in all cases.

4. CONCLUSION. Communication and coordination with the SJA are the keys to processing child abuse allegations. It is important to recognize that the civil and criminal aspects interact at all levels. The goal of protecting children is best served by understanding the application of the rules and regulations in all Fort Knox cases.

5. POC is the Administrative Law Division, 4-7414/4668.

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